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Attorneys for Plaintiff X Corp.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

X CORP.,

Plaintiff,

v.

ROBERT A. BONTA, Attorney
General of California, in his
official capacity,

Defendant.

No. 2:23-cv-01939-WBS-AC

**AFFIDAVIT OF JOEL KURTZBERG
IN SUPPORT OF X CORP.'S MOTION
FOR PRELIMINARY INJUNCTION**

1 Joel Kurtzberg, being duly sworn, deposes and states as follows:

2 1. I am a partner of the law firm Cahill Gordon & Reindel
3 LLP, attorneys for X. Corp in the above-captioned action. I am a
4 licensed member of the Bar of the State of New York and admitted
5 *pro hac vice* to appear before this Court in the above-captioned
6 action.

7 2. I am submitting this affidavit in connection with
8 Plaintiff's Motion for Preliminary Injunction to put copies of
9 certain documents before the Court that are referenced in X Corp.'s
10 motion papers.

11 3. Annexed as **Exhibit 1** is a true and correct copy of the
12 Motion to Dismiss in *Minds, Inc., et al. v. Bonta*, No. 23-cv-2705
13 (ECF 23-1) (C.D. Cal. May 25, 2023).

14 4. Annexed as **Exhibit 2** is a true and correct copy of
15 California Assembly Bill No. 587, which is codified in law at Cal.
16 Bus. & Prof. Code §§ 22675-22681.

17 5. Annexed as **Exhibit 3** is a true and correct copy of Section
18 230 of the Communications Decency Act (47 U.S.C. § 230).

19 6. Annexed as **Exhibit 4** is a true and correct copy of the
20 press release *Governor Newsom Signs Nation-Leading Social Media*
21 *Transparency Measure*, Office of Governor Gavin Newsom (Sept. 13,
22 2022), available at [https://www.gov.ca.gov/2022/09/13/governor-](https://www.gov.ca.gov/2022/09/13/governor-newsom-signs-nation-leading-social-media-transparency-measure/)
23 [newsom-signs-nation-leading-social-media-transparency-measure/](https://www.gov.ca.gov/2022/09/13/governor-newsom-signs-nation-leading-social-media-transparency-measure/)
24 (last visited Oct. 6, 2023).

1 7. Annexed as **Exhibit 5** is a true and correct copy of the
2 California Assembly Committee on Judiciary Committee Report, 2021-
3 22 Sess. (AB 587), Apr. 27, 2021.

4 8. Annexed as **Exhibit 6** is a true and correct copy of the
5 California Assembly Committee on Privacy and Consumer Protection
6 Report, 2021-22 Sess. (AB 587), Apr. 22, 2021.

7 9. Annexed as **Exhibit 7** is a true and correct copy of
8 California Government Code §§ 11180-81 (Cal. Gov't Code §§ 11180-
9 81).

10 10. Annexed as **Exhibit 8** is a true and correct copy of X
11 Corp's Terms of Service (effective Sept. 29, 2023), available at
12 <https://twitter.com/en/tos> (last visited Oct. 6, 2023).

13 11. Annexed as **Exhibit 9** is a true and correct copy of the
14 California Assembly Floor Analysis, 2021-22 Sess. (AB 587), Apr.
15 28, 2021.

16 12. Annexed as **Exhibit 10** is a true and correct copy of the
17 California Assembly Floor Analysis, 2021-22 Sess. (AB 587), Aug.
18 24, 2022.

19 13. Annexed as **Exhibit 11** is a true and correct copy of the
20 National Institute of Health Gender Pronouns Resource, *The*
21 *Importance of Gender Pronouns & Their Use in Workplace*
22 *Communications*, U.S. Department of Health and Human Services (Jan.
23 2022), available at [https://dpcpsi.nih.gov/sgmro/gender-pronouns-](https://dpcpsi.nih.gov/sgmro/gender-pronouns-resource)
24 [resource](https://dpcpsi.nih.gov/sgmro/gender-pronouns-resource) (last visited Oct. 6, 2023).

1 14. Annexed as **Exhibit 12** is a true and correct copy of the
2 Bloomberg Law article *Fight Over Transgender Pronouns at Work Faces*
3 *Muddy Legal Waters*, Khorri Atkinson (Apr. 13, 2023), available at
4 [https://news.bloomberglaw.com/daily-labor-report/fight-over-](https://news.bloomberglaw.com/daily-labor-report/fight-over-transgender-pronouns-at-work-faces-muddy-legal-waters)
5 [transgender-pronouns-at-work-faces-muddy-legal-waters](https://news.bloomberglaw.com/daily-labor-report/fight-over-transgender-pronouns-at-work-faces-muddy-legal-waters) (last
6 visited Oct. 6, 2023).

7 15. Annexed as **Exhibit 13** is a true and correct copy of the
8 article *A Guide to Recognizing When Anti-Israel Actions Become*
9 *Antisemitic*, American Jewish Committee, available at
10 [https://www.ajc.org/sites/default/files/pdf/2021-](https://www.ajc.org/sites/default/files/pdf/2021-10/A%20Guide%20to%20Recognizing%20When%20Anti-Israel%20Actions%20Become%20Antisemitic.pdf)
11 [10/A%20Guide%20to%20Recognizing%20When%20Anti-](https://www.ajc.org/sites/default/files/pdf/2021-10/A%20Guide%20to%20Recognizing%20When%20Anti-Israel%20Actions%20Become%20Antisemitic.pdf)
12 [Israel%20Actions%20Become%20Antisemitic.pdf](https://www.ajc.org/sites/default/files/pdf/2021-10/A%20Guide%20to%20Recognizing%20When%20Anti-Israel%20Actions%20Become%20Antisemitic.pdf) (last visited Oct. 6,
13 2023).

14 16. Annexed as **Exhibit 14** is a true and correct copy of the
15 article *Is Criticism of Israel Antisemitic?*, Anne Frank House,
16 available at
17 [https://www.annefrank.org/en/topics/antisemitism/all-criticism-](https://www.annefrank.org/en/topics/antisemitism/all-criticism-israel-antisemitic/)
18 [israel-antisemitic/](https://www.annefrank.org/en/topics/antisemitism/all-criticism-israel-antisemitic/) (last visited Oct. 6, 2023).

19 17. Annexed as **Exhibit 15** is a true and correct copy of the
20 article *The Myth of Reverse Racism*, Alberta Civil Liberties
21 Research Centre, available at [https://www.aclrc.com/myth-of-](https://www.aclrc.com/myth-of-reverse-racism)
22 [reverse-racism](https://www.aclrc.com/myth-of-reverse-racism) (last visited Oct. 6, 2023).

23 18. Annexed as **Exhibit 16** is a true and correct copy of the
24 article *Can White People Experience Racism?*, The Economist (Sept.
25

1 18, 2018), available at [https://www.economist.com/open-](https://www.economist.com/open-future/2018/09/18/can-white-people-experience-racism)
2 [future/2018/09/18/can-white-people-experience-racism](https://www.economist.com/open-future/2018/09/18/can-white-people-experience-racism) (last
3 visited Oct. 6, 2023).

4 19. Annexed as **Exhibit 17** is a true and correct copy of The
5 Harvard Crimson article *Who Can be 'Racist'?*, Michelle Gao, (Aug.
6 10, 2018), available at [https://www.thecrimson.com/column/between-](https://www.thecrimson.com/column/between-the-lines/article/2018/8/10/gao-who-can-be-racist/)
7 [the-lines/article/2018/8/10/gao-who-can-be-racist/](https://www.thecrimson.com/column/between-the-lines/article/2018/8/10/gao-who-can-be-racist/) (last visited
8 Oct. 6, 2023).

9 20. Annexed as **Exhibit 18** is a true and correct copy of the
10 Yale School of Medicine article, *Calling COVID-19 the "Wuhan Virus"*
11 *or "China Virus" is Inaccurate and Xenophobic*, Marlette Vazquez,
12 (Mar. 12, 2020), available at [https://medicine.yale.edu/news-](https://medicine.yale.edu/news-article/calling-covid-19-the-wuhan-virus-or-china-virus-is-inaccurate-and-xenophobic/)
13 [article/calling-covid-19-the-wuhan-virus-or-china-virus-is-](https://medicine.yale.edu/news-article/calling-covid-19-the-wuhan-virus-or-china-virus-is-inaccurate-and-xenophobic/)
14 [inaccurate-and-xenophobic/](https://medicine.yale.edu/news-article/calling-covid-19-the-wuhan-virus-or-china-virus-is-inaccurate-and-xenophobic/) (last visited Oct. 6, 2023).

15 21. Annexed as **Exhibit 19** is a true and correct copy of
16 Michael Shellenberger's Testimony to the House Select Committee on
17 the Weaponization of the Federal Government, *The Censorship*
18 *Industrial Complex: U.S. Government Support For Domestic Censorship*
19 *And Disinformation Campaigns, 2016 - 2022* (Mar. 9, 2023), available
20 at [https://judiciary.house.gov/sites/evo-subsites/republicans-](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/shellenberger-testimony.pdf)
21 [judiciary.house.gov/files/evo-media-document/shellenberger-](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/shellenberger-testimony.pdf)
22 [testimony.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/shellenberger-testimony.pdf) (last visited Oct. 6, 2023).

23 22. Annexed as **Exhibit 20** is a true and correct copy of the
24 California Assembly Analysis, 2021-22 Sess. (AB 587), May 24, 2021.

1 23. Annexed as **Exhibit 21** is a true and correct copy of the
2 California Senate Judiciary Committee Report, 2021-22 Sess. (AB
3 587), July 13, 2021.

4 24. Annexed as **Exhibit 22** is a true and correct copy of a
5 Tweet by Senator Scott Wiener (@Scott_Wiener) (July 2, 2020, 1:32
6 PM EST), available at
7 https://twitter.com/Scott_Wiener/status/1278743357032812544 (last
8 visited Oct. 6, 2023)

9 25. Annexed as **Exhibit 23** is a true and correct copy of the
10 press release *California Legislators Introduce Bipartisan Effort*
11 *to Hold Social Media Companies Accountable for Online Hate and*
12 *Disinformation*, Office of Assembly Member Jesse Gabriel (Mar. 29,
13 2021), available at [https://a46.asmdc.org/press-releases/20210329-](https://a46.asmdc.org/press-releases/20210329-california-legislators-introduce-bipartisan-effort-hold-social-media)
14 [california-legislators-introduce-bipartisan-effort-hold-social-](https://a46.asmdc.org/press-releases/20210329-california-legislators-introduce-bipartisan-effort-hold-social-media)
15 [media](https://a46.asmdc.org/press-releases/20210329-california-legislators-introduce-bipartisan-effort-hold-social-media) (last visited Oct. 6, 2023).

16 26. Annexed as **Exhibit 24** is a true and correct copy of a
17 Tweet by Assembly Member Jesse Gabriel (@AsmJesseGabriel) (June
18 14, 2021, 5:37 PM EST), available at
19 <https://twitter.com/AsmJesseGabriel/status/1404553699502870529>
20 (last visited Oct. 6, 2023).

21 27. Annexed as **Exhibit 25** is a true and correct copy of the
22 California Senate Judiciary Committee Report, 2021-22 Sess. (AB
23 587), June 28, 2022.

24 28. Annexed as **Exhibit 26** is a true and correct copy of a
25

1 law review article by Eric Goldman, *The Constitutionality of*
2 *Mandating Editorial Transparency*, 73 Hastings L.J. 1203 (2022).

3 29. Annexed as **Exhibit 27** is a true and correct copy of a
4 legal article by Daphne Keller, *Platform Transparency and the First*
5 *Amendment*, Stanford Cyber Policy Center (Mar. 3, 2023), available
6 at

7 <https://ssrn.com/abstract=4377578> or <http://dx.doi.org/10.2139/ss>
8 [rn.4377578](http://dx.doi.org/10.2139/ssrn.4377578) (last visited Oct. 6, 2023).

9 30. Annexed as **Exhibit 28** is a true and correct copy of the
10 Technology & Marketing Law Blog article, *Will California Clone-*
11 *and-Revise Some Terrible Ideas from Florida/Texas' Social Media*
12 *Censorship Laws? (Analysis of CA AB 587)*, Eric Goldman (June 21,
13 2022), available at

14 [https://blog.ericgoldman.org/archives/2022/06/will-california-](https://blog.ericgoldman.org/archives/2022/06/will-california-clone-and-revise-some-terrible-ideas-from-florida-texas-social-media-censorship-laws-analysis-of-ca-ab587.htm)
15 [clone-and-revise-some-terrible-ideas-from-florida-texas-social-](https://blog.ericgoldman.org/archives/2022/06/will-california-clone-and-revise-some-terrible-ideas-from-florida-texas-social-media-censorship-laws-analysis-of-ca-ab587.htm)
16 [media-censorship-laws-analysis-of-ca-ab587.htm](https://blog.ericgoldman.org/archives/2022/06/will-california-clone-and-revise-some-terrible-ideas-from-florida-texas-social-media-censorship-laws-analysis-of-ca-ab587.htm) (last visited Oct.
17 6, 2023).

18 31. Annexed as **Exhibit 29** is a true and correct copy of a
19 press release entitled *After Two-Year Fight, Governor Newsom Signs*
20 *Landmark Social Media Transparency Bill*, Office of Assembly Member
21 Jesse Gabriel (Sept. 13, 2021), available at
22 [https://a46.asmdc.org/press-releases/20220913-after-two-year-](https://a46.asmdc.org/press-releases/20220913-after-two-year-fight-governor-newsom-signs-landmark-social-media)
23 [fight-governor-newsom-signs-landmark-social-media](https://a46.asmdc.org/press-releases/20220913-after-two-year-fight-governor-newsom-signs-landmark-social-media) (last visited
24 Oct. 6, 2023).

1 Dated: New York, NY
2 October 6, 2023


JOEL KURTZBERG

3
4 Sworn to before me this
5 6th day of October, 2023

6
7 
8 Notary Public

9 JOSHUA A. ROY
Notary Public, State of New York
No. 01R06171076
10 Qualified in New York County
Commission Expires July 23, 2027